

2012 : No. 3 Fall

Paris Ari Hart Simons

Vancouver, BC

Called to the bar: November 19, 1999

Discipline hearing : May 17, 2012

Panel : *Majority decision:* Thelma O'Grady, Chair and Jennifer Reid; *Minority decision:* Carol Gibson

Report issued : July 3, 2012 (2012 LSBC 23)

Counsel : Carolyn Gulabsingh for the Law Society and Paris Ari Hart -Simons appearing on his own behalf

Facts

In January 2006, Paris Ari Hart Simons agreed to become counsel of record for a client who was seeking damages for negligent chiropractic treatment. Although Simons did not have any experience with medical negligence claims, he took the case with good intentions of helping the client.

Simons presented the client with a contingency fee agreement, but the client did not sign it. The client was not able to pay for expert reports or other disbursements and did not give any retainer funds to Simons.

Before Simons was retained, the client's matter had been scheduled for mediation in February 2006 and for trial in March 2006. Counsel for the defendants agreed to postpone the mediation and adjourn the trial after Simons was retained.

Simons familiarized himself with the file and attempted to assemble various expert reports to prove the client's claim, but otherwise took no action between January 2006 and May 2009. He did not file a Notice of Intention to Proceed.

In February 2007, Simon's client began expressing her frustration in communicating with him and with the lack of progress in her case. Between February 2007 and December 2009, Simons did not respond substantively or at all to 14 emails from his client or answer requests for information on 20 occasions.

On June 2, 2009, counsel for the defendants sent Simons a letter advising that the defendants would apply to dismiss the client's claim for want of prosecution. Simons did not provide a copy of this correspondence to his client.

On September 1, the client emailed Simons and copied the Law Society, indicating she was seeking assistance in engaging Simons to communicate with her. The Law Society contacted Simons to encourage him to respond to the client.

Simons and the client exchanged email messages; however, Simons did not follow through with sending documents to the client.

On October 9, Simons received the defendants' application to dismiss the claim for want of prosecution. Simons wrote to counsel for the defendants advising he intended to defend the application to dismiss. He did not provide copies of the application or his letter to the client.

On January 4, 2010, counsel for the defendants wrote to Simons to confirm the defendants' application to dismiss would be heard on February 12, 2010. Simons met with his client and still made no mention of the defendants' application.

On February 11, Simons left a convoluted voicemail message for the -client advising that he had reported himself to the professional liability insurer and awaited advice about whether he could continue to act for her.

On February 12, Simons appeared before the court, advising that he had contacted his insurer, wished to be removed from the record and requested an adjournment. The judge made an order dismissing the client's claim and awarded costs of the proceeding and the application to the defendants.

Admission and disciplinary action

Simons admitted that his conduct related to quality of service and misleading his client constituted professional misconduct. In particular, he admitted that he failed to:

- keep his client reasonably informed about the status and progress of the court action;
- answer his client's reasonable requests for information;
- take action as described to the client;
- answer communications that required a response within a reasonable time or do work promptly, or at all;
- disclose all relevant information to the client and thus misled the client.

Misleading a client is serious misconduct. The panel stated that, in this case, the impact on the client was considerable as the court action was dismissed, without notice to her, and she was then without counsel. Simons misled the client about the status of the court action and the quality of service he had provided to her. His failure to take steps to conclude the court action was exacerbated by his failure to communicate effectively with the client.

The panel took into consideration that Simons' misconduct appeared to have conveyed little or no benefit to him. Simons did not receive any retainer funds from the client and did not invoice her for services provided.

The panel accepted Simons' admissions and ordered that he be suspended for one month. The majority made no order as to costs on the basis that he had cooperated with the Law Society and admitted his misconduct. His financial situation could not withstand an award of costs on top of a suspension.

Minority (*Gibson*)

The minority concurred with the majority, with the exception of the issue of waiving costs. The minority was concerned that, from the public perspective, waiving costs did not meet the purpose of the discipline proceedings, which are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve the public confidence in the legal profession.

The minority was mindful of the fact that Simons had little income this year and, therefore, proposed that he pay costs of \$1,000.